IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.4472 of 2006
to
FIRST APPEAL No.4493 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER & 1 - Appellant(s)
Versus
MERUJI SURSANGAJI - Respondent(s)

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Appearance :
MR KRUNAL D PANDYA, AGP for Appellants (In FA No.4472/06 to 4479/06)
MS TANUJA N.KACHCHHI, AGP for Appellants (In FA No.4480/06 to 4486/06)
MS KRINA P.CALLA, AGP for Appellants (In FA No.4487/06 to 4493/06)
MR JAYESH PATEL FOR MR AJ PATEL for Respondent(s) (In all FAs)

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 05/12/2006

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. These Appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated May 9, 2005, rendered by the learned Assistant Judge and Special Judge (LAR), Ahmedabad (R) at Ahmedabad, in Land Acquisition Case No.779 of 1998 to Land Acquisition Case No.800 of 1998, by which, the claimants have been awarded additional amount of compensation at the rate of Rs.15.60 ps. per sq.mt. for their acquired lands over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Re.0.60 ps. per sq.mt., by his award dated September 11,1996.

2. The Executive Engineer, Narmada Project, Goraiya Branch Canal, Gandhinagar, proposed to the State Government to acquire the lands of village Boska, Taluka: Detroj, District: Ahmedabad, for the public purpose of construction of Narmada Canal. On scrutiny of the said proposal, the State Government was satisfied that the lands of village Boska were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the official gazette on April 18, 1994. The land owners were thereafter served with notices under Section 4(1) of the Act. On service of notice, they opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the

State Government was satisfied that the lands of village Boska, which were specified in the notification published under Section 4(1) of the Act, were needed for the public purpose of construction of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on February 16, 1995. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.20/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated September 11, 1996, offered compensation to the claimants at the rate of Re.0.60 per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land

Acquisition Officer was totally inadequate. Therefore, they filed applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Ahmedabad (R) where they were registered as Land Acquisition Case No.779 of 1998 to Land Acquisition Case No.800 of 1998.

3. On behalf of the claimants, witness Meruji Sursangji was examined at Ex.38. The witness mentioned that the lands acquired were irrigated lands and that each claimant was able to raise different crops in three different seasons. It was asserted by the witness that each claimant was earning Rs.35,000/- to Rs.40,000/- per year per Vigha from the sale of agricultural produces such as

cotton, Juwar, millet, wheat, cumin seeds, etc. After mentioning that his village was fully developed, the witness asserted that the boundary of village Boska was adjoining to the boundary of village Panar. The witness further mentioned before the Reference Court that earlier, the lands of village Panar were acquired which were similar in all respects to the lands acquired in the instant case, including fertility. The witness also claimed that his village was more developed in comparison to village Panar. Though this witness was cross-examined on behalf of the appellants at length, nothing substantial could be elicited nor his assertion that the lands of village Panar which were previously acquired were similar in all respects to the lands acquired in the instant case could be demonstrated to be untrue.

4. On behalf of the appellants, witness

Shashikant Punamchand Mahant, who was then Deputy Executive Engineer in the office of the Narmada Project, was examined at Ex.40. In his cross-examination, the witness mentioned that after taking into consideration all relevant factors, the Special Land Acquisition Officer had determined the compensation payable to the claimants and therefore, they were not entitled to enhanced compensation. However, in his cross-examination, the witness had to admit that he had no personal knowledge regarding the acquisition proceedings initiated in the instant case and that he was deposing before the Court on the basis of record available. What was admitted by the witness in his cross-examination was that the boundary of village Boska was adjoining to the boundary of village Panar and that almost similar crops were bring raised on the lands of two villages.

5. On appreciation of evidence adduced by the parties, the Reference court was of the opinion that the previous award of the Reference Court relating to the lands of village Panar was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. It was noticed by the Reference Court that notification issued under Section 4(1) of the Act was published in the official gazette on August 30, 1992, for the purpose of acquiring the lands of village Panar, whereas in the instant case, notification issued under Section 4(1) of the Act was published in the official gazette on April 18, 1994, and in view of the time-gap between publication of two notifications, the claimants were entitled to reasonable rise in price of the lands at the rate of 10% p.a. In the ultimate analysis, the Reference Court

has awarded additional amount of compensation to the claimants at the rate of Rs.15.60 ps. per sq.mt. by the impugned award giving rise to these Appeals.

6. This Court has heard Mr.Krunal D.Pandya, learned Assistant Government Pleader for the appellants and Mr.Jayesh M.Patel, learned advocate for Mr.A.J.Patel, learned advocate for the claimants, at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

7. Though witness Meruji Sursangji examined by the claimants at Ex.38 could not make good his assertion that each claimant was earning Rs.35,000/- to Rs.40,000/- per year per Vigha from the sale of different agricultural produces, there is no manner

of doubt that the lands acquired were fertile and that each claimant was able to raise different crops thereon. This fact stands established by the contents of Village Form No.7/12 produced at Ex.16 to Ex.36. The record does not show that enhanced compensation was claimed by the claimants either on the yield basis or on the basis of comparable sale instances. What was relied upon by the claimants in support of their claim for enhanced compensation was the previous award of the Reference Court relating to the lands of village Panar, which was produced at Ex.37. Exhibit 37 indicates that the lands of village Panar were acquires for the public purpose of construction of Viramgam Branch Canal No.2 of Narmada Nigam pursuant to publication of notification issued under Section 4 of the Act in the official gazette on August 30, 1992. Therein, the Special Land Acquisition Officer, by his award dated

September 30, 1994, had offered compensation to the claimants at the rate of Rs.1.27 ps. per sq.mt. for irrigated lands and Re.0.85 ps. per sq.mt. for non-agricultural lands. Feeling dissatisfied, the claimants had sought References. Accordingly, References were made to the District Court, Ahmedabad (Rural), where they were registered as Land Acquisition Case No.1140 of 1996 with Land Acquisition Case No.1436 of 1996 to Land Acquisition Case No.1443 of 1996. Therein, witness Thakore Bhaluji Visaji was examined on behalf of the claimants at Ex.30 whereas on behalf of the acquiring bodies, witness Yogeshbhai Bhikhalal Shukla was examined at Ex.32. On appreciation of evidence adduced by the parties in the said cases, the Reference court, by judgment and award dated October 20, 2003, awarded additional compensation to the claimants at the rate of Rs.13/- per sq.mt.

Mr.Jayesh M.Patel, learned counsel for the claimants, has produced a simple copy of the judgment dated June 14, 2006, rendered by the Division Bench of this court in First Appeal No.1690 of 2006 to First Appeal No.1697 of 2006, which indicates that the award of the Reference Court dated October 20, 2003, rendered in Land Acquisition Case No.1140 of 1996 with Land Acquisition Case No.1436 of 1996 to Land Acquisition Case No.1443 of 1996 was confirmed by the High Court. It is well settled that the previous award of the Reference Court relating to the lands of a village which has attained finality can be considered to be a good piece of evidence and relied upon for the purpose of determining the market value of similar lands acquired subsequently from an adjoining village. As observed earlier, it is satisfactorily established by the claimants that the lands of village Panar and the lands acquired in

the instant case were similar in all respects and even the crop pattern was also the same. Therefore, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of village Panar for the purpose of determining the market value of the lands acquired in the instant case.

8. On re-appreciation of the evidence adduced by the parties before the Reference Court, this Court finds that correct findings of facts have been recorded to which settled principles of law have been applied. The learned Assistant Government Pleader could not persuade this Court to take a view different than the one which is taken by the Reference court on appreciation of evidence. Therefore, the Appeals lack merits, cannot be accepted and are liable

to be dismissed.

9. For the foregoing reasons, all the Appeals fail and are dismissed. There shall be no order as to costs. The Registry is directed to draw decree in terms of this Judgment immediately.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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